

ON 2/21/2019

By /s/ Mia Marlowe
Deputy Clerk

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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DEFENDANTS' CASE MANAGEMENT
STATEMENT**

Date: March 8, 2019
Time: 9:00 a.m.
Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

1 Defendants Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin,
2 Michael Vernal, and Ilya Sukhar (collectively “Defendants”) submit the following Case Management
3 Statement in advance of the Case Management Conference set for March 8, 2019.

4 **I. CASE STATUS**

5 On November 21, 2018, Theodore Kramer, CEO and founder of Plaintiff Six4Three, LLC
6 (“Six4Three”) violated this Court’s protective order; the Court’s sealing order of November 1, 2018; and
7 the Court’s order of November 20, 2018 that Six4Three should not disclose any Facebook documents by
8 disclosing Confidential and Highly Confidential information to the Digital, Culture, Media, and Sport
9 (“DCMS”) Committee of the United Kingdom.

10 In December 2018, the DCMS Committee published several of the documents that Six4Three and
11 Mr. Kramer had disclosed to it, including documents that were designated as Confidential or Highly
12 Confidential under the protective order. On February 15, 2019, the day before the President’s Day long
13 weekend, Mr. Collins tweeted that the DCMS Committee would be releasing additional documents from
14 Six4Three and Mr. Kramer’s disclosure. (The Court will recall that Mr. Kramer had contacted Mr. Collins
15 last fall and invited him to order Mr. Kramer to produce the Facebook documents that Six4Three had
16 received in litigation.) On February 16, 2019, a Saturday, Mr. Godkin notified Facebook’s counsel that
17 “Damien Collins has announced on Twitter his intention to release additional Facebook documents,” and
18 passed the responsibility for preventing this further release of documents onto Facebook, even though it
19 was his client that had disclosed the documents and initiated the relationship with the DCMS Committee
20 in the first place. Because Six4Three and its legal team were responsible for the disclosure to the DCMS
21 Committee, Facebook’s counsel asked Mr. Godkin multiple times to “identify any steps taken by
22 Six4Three, [him], or the Six4Three legal team since November 19, 2018 to prevent disclosure or release
23 of the documents by DCMS, including steps that Six4Three, [he], or the Six4Three legal team have taken
24 to prevent the release referenced in the email below.” Mr. Godkin refused to do so, despite the fact that
25 Mr. Kramer had previously said, in an apparent attempt to gain sympathy from the Court, that he had
26 engaged an international law firm in Washington, D.C., to “undertake whatever efforts it can under British
27 law to either obtain the documents that were provided . . . or to . . . secure agreement that they will not be
28 released[.]” *See* Nov. 30, 2018 Hrg. Tr. at 57:2-7. The DCMS Committee subsequently published yet

1 more documents that Six4Three and Mr. Kramer had disclosed to it, all of which were designated as
2 Confidential under the protective order.¹ All of these documents were published online in their entirety.
3 *Id.* The DCMS Committee also released its final report on “Disinformation and ‘fake news,’” which relied
4 heavily on the Confidential and Highly Confidential documents that Six4Three and Mr. Kramer disclosed
5 to the DCMS Committee, and quoted and described those documents.² The report notes several times that
6 the documents were sealed in this Court, showing a complete disregard for the integrity of this judicial
7 system and the sanctity of its orders.³

8 At the same time, Six4Three was apparently readying a misleading and libelous fundraising plea,
9 which Six4Three published on February 19, 2019. The plea, posted to the publishing platform Medium
10 and linking users to a fundraising page at GoFundMe.com, falsely accused Facebook of intentionally
11 violating user privacy and engaging in “mafia-like tactics.” *How Facebook Sold Your Data and Fooled*
12 *Government Regulators (Until Now)* (Feb. 19, 2019), available at [https://medium.com/@six4three/how-](https://medium.com/@six4three/how-facebook-sold-your-data-and-fooled-government-regulators-until-now-b8b3d41fb565)
13 [facebook-sold-your-data-and-fooled-government-regulators-until-now-b8b3d41fb565](https://medium.com/@six4three/how-facebook-sold-your-data-and-fooled-government-regulators-until-now-b8b3d41fb565). The plea falsely
14 claims that, “[o]nce a company relied on [Facebook’s] APIs based on Facebook’s promises, Facebook then
15 effectively put a gun to its head and forced it to deliver data or money for ads.” *Id.* Six4Three then leveled
16 baseless accusations against Facebook regarding its litigation conduct: “They have put our families through
17 immense distress. We’ve been tracked, followed, intimidated, [and] harassed[.]” *Id.* Six4Three should not
18 be permitted to continue to avoid any scrutiny by this Court (and Facebook) as to its admitted misconduct
19 and violation of Court orders, while attempting to cloak its false, inflammatory public accusations as
20 somehow legitimate because Facebook produced discovery (which does not in fact support those
21 accusations) as part of the litigation process.

22 To this day, Six4Three and its legal team, including Thomas Scaramellino, Birnbaum & Godkin,
23 LLP (“Birnbaum & Godkin”), and Gross & Klein LLP (“Gross & Klein”) have not provided Facebook the
24

25 ¹ *Further selected documents ordered from Six4Three*, available at
26 [https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Further-selected-](https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Further-selected-documents-ordered-from-Six4Three-Feb19.pdf)
27 [documents-ordered-from-Six4Three-Feb19.pdf](https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Further-selected-documents-ordered-from-Six4Three-Feb19.pdf)

28 ² *Disinformation and 'fake news': Final Report* (Feb. 18, 2019), available at
<https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/179102.htm>

³ *See, e.g., id.* at 5, 20, 26, 27, 40.

information necessary for Facebook and the Court to understand the scope of Six4Three and its legal team's violations of the Court's orders and to remediate those violations. They have not even identified all entities to whom they disclosed Facebook's Confidential and Highly Confidential information, and so Facebook still does not know who has its Confidential and Highly Confidential information and what they intend to do with it. For instance, Facebook does not know if the DCMS Committee has now published all of the documents Six4Three and Mr. Kramer disclosed to it, or if it intends to publish additional documents containing Facebook's Confidential and Highly Confidential information in the future. Instead of cooperating with Facebook, Six4Three and its legal team have repeatedly obstructed Facebook's limited requests for discovery and repeatedly delayed the hearing on Facebook's motion to open limited discovery into Six4Three and its legal team's breaches of this Court's orders. Facebook's motion to open limited discovery was originally set for hearing on February 7, 2019, but has been delayed for more than a month. The hearing on that motion should proceed as planned on March 15, 2019. But if Six4Three requests a further continuance, then Facebook requests that the hearing occur at the Court's earliest convenience and no later than April 9, 2019.

As another example, Facebook—with the Court's leave—originally served deposition notices on shortened time on these issues on November 30, 2018. But Facebook still has not been able to depose any witness regarding the multiple violations of the Court's orders. Facebook thus respectfully requests that the Court promptly resolve the motions to withdraw and then set a schedule for limited discovery and a briefing schedule for motions for terminating sanctions and contempt as set forth in Section III.

II. PENDING MOTIONS

The following motions are currently pending before the Court:

Motion	Filed	Briefing Status	Original Hearing Date	Current Hearing Date
Birnbaum & Godkin LLP's Motion to be Relieved as Counsel	January 8, 2019	Fully briefed	February 7, 2019	March 13, 2019
Stuart Gross and Gross & Klein LLP's Motion to be Relieved as Counsel	January 8, 2019	Fully briefed	February 7, 2019	March 13, 2019
Defendant Facebook, Inc.'s Motion to Seal	January 17, 2019	Motion filed	February 7, 2019	March 13, 2019

Motion	Filed	Briefing Status	Original Hearing Date	Current Hearing Date
Defendant Facebook, Inc.'s Motion to Open Discovery and to Compel	January 8, 2019	Motion filed	February 7, 2019	March 15, 2019
Defendants Mark Zuckerberg, Christopher Cox, Javien Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar's Motion for Attorneys' Fees and Costs Pursuant to California Code of Civil Procedure Section 25.16(c)	September 14, 2018	Fully briefed	December 7, 2018	March 15, 2019
Six4Three's Motion for Attorneys' Fees and Costs in Opposing Facebook's Special Motion to Strike (Anti-SLAPP)	September 21, 2018	Motion and opposition filed	January 11, 2019	March 15, 2019
Defendant Facebook, Inc.'s Motion to Seal	January 8, 2019	Motion filed	February 7, 2019	TBD

III. PROPOSED SCHEDULE

Event	Date
Hearing on <ul style="list-style-type: none"> Birnbaum & Godkin LLP's Motion to be Relieved as Counsel Stuart Gross and Gross & Klein LLP's Motion to be Relieved as Counsel Defendant Facebook, Inc.'s Motion to Seal (filed Jan. 17, 2019) 	March 13, 2019
Hearing on Defendant Facebook, Inc.'s Motion to Open Discovery and to Compel	March 15, 2019
Deadline for Six4Three to retain counsel, if the Court grants the motions to withdraw	March 27, 2019
Hearing on <ul style="list-style-type: none"> Defendants Mark Zuckerberg, Christopher Cox, Javien Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar's Motion for Attorneys' Fees and Costs Pursuant to California Code of Civil Procedure Section 425.16(c) Six4Three's Motion for Attorneys' Fees and Costs in Opposing Facebook's Special Motion to Strike (Anti-SLAPP) Defendant Facebook, Inc.'s Motion to Seal (filed Jan. 8, 2019) 	At the Court's earliest convenience, following the hearing on Defendant Facebook, Inc.'s Motion to Open Discovery and to Compel

Event	Date
Deadline for Six4Three, Birnbaum & Godkin, Gross & Klein, and Scaramellino to complete production of documents responsive to Facebook's Nov. 30, 2018 document requests	April 16, 2019
Completion of depositions of Mr. Kramer, Mr. Scaramellino, Mr. Godkin, Mr. Kruzer, and Mr. Gross	April 30, 2019
Facebook files motions for terminating sanctions, contempt	May 7, 2019
Hearing on Facebook's motions for terminating sanctions, contempt	May 29, 2019, or at the Court's earliest convenience

Dated: February 21, 2019

DURIE TANGRI LLP

By: _____


CATHERINE Y. KIM

Attorney for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox,
Javier Olivan, Samuel Lessin, Michael Vernal, and
Ilva Sukhar

PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On February 21, 2019, I served the following documents in the manner described below:

DEFENDANTS' CASE MANAGEMENT STATEMENT

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from jposada@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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Attorney for Birnbaum & Godkin, LLP

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on February 21, 2019, at San Francisco, California.

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